

SAMPLE CLAUSES AND EXAMPLES

RELATING TO 806 KAR 3:210

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. However, please note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

1. Categories of information a licensee collects—all institutions

A licensee may use this clause, as applicable, to meet the requirement of Section 7 (1)(a) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause 1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

Categories of information a licensee discloses—institutions that disclose outside of the exceptions

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7 (1)(b) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause 2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause 2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

Categories of information a licensee discloses and parties to whom the licensee discloses—institutions that do not disclose outside of the exceptions

A licensee may use this clause, as applicable, to meet the requirements of Sections 7 (1)(b), (c), and (d) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.

Sample Clause 3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

Categories of parties to whom a licensee discloses—institutions that disclose outside of the exceptions

A licensee may use this clause, as applicable, to meet the requirement of Section 7(1)(c) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

Sample Clause 4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and

- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

5. Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7(1)(e) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause 5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause 5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

6. Explanation of opt out right—institutions that disclose outside of the exceptions

A licensee may use this clause, as applicable, to meet the requirement of Section 7(1)(f) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause 6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)"].

7. Confidentiality and security—all institutions

A licensee may use this clause, as applicable, to meet the requirement of Section 7(1)(h) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause 7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

8. Examples of regulation provisions

a. Example of establishing customer relationship referenced in Section 5(3)(b). A licensee establishes a customer relationship when the consumer:

1. Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or
2. Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

b. Examples of exceptions referenced in Section 5(5)(b).

1. Not at customer’s election. Establishing a customer relationship is not at the customer’s election if a licensee acquires or is assigned a customer’s policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee’s acquisition or assignment.
2. Substantial delay of customer’s transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer’s transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

3. No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

c. Example of annual privacy notice referenced in Section 6(1)(b). A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

d. Examples of customer terminations referenced in Section 6 (2)(b):

1. A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

2. A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

3. For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

4. A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

e. Examples of obtaining privacy notice as referenced in Section 7(4)(d). The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

1. Provides a toll-free telephone number that the consumer may call to request the notice; or

2. For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

f. Example of joint consumers opt out referenced in Section 8(4)(e). If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

1. Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

2. Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

3. Permit John and Mary to make different opt out directions. If the licensee does so:

a. It shall permit John and Mary to opt out for each other;

b. If both opt out, the licensee shall permit both of them to notify it in a single response, on a form or through a telephone call; and

c. If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

g. Example of initial notice requirement referenced in Section 21(2)(b). A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all its new customers and has mailed the notice to all the licensee's existing customers.

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